



their Response to Plaintiffs' Motion to Strike Defendants' Motion to Dismiss, and respectfully show the Court as follows:

## **I. BACKGROUND SUMMARY**

1. On April 6, 2023, Plaintiffs filed their *Original Complaint* [Dkt.1] alleging a number of different claims against various Defendants, including claims against Sunset Valley Police Officers Crystal Gill and Robert Eller, Sunset Valley Police Chief Lenn Carter, Sunset Valley Mayor Marc Bruner, Sunset Valley Municipal Judge Kenton Johnson, Sunset Valley Prosecutor Barbara Boulware-Wells, Sunset Valley Prosecutor Audrey Guthrie, and former Sunset Valley Prosecutor Jeff Ullman, in connection with Plaintiff Kara Bell's arrest and subsequent prosecution.
2. On June 23, 2023, Plaintiffs filed their *First Amended Complaint*. [Dkt. 3].
3. On June 26, 2023, Plaintiffs filed their *Second Amended Complaint*. [Dkt. 5].
4. On July 14, 2023, Defendants filed their *Motion to Dismiss Plaintiffs' Second Amended Complaint* [Dkt.9].
5. On September 14, 2023, Plaintiffs filed *Plaintiff's Motion to Strike Rule 12 Motion* [Dkt.56]. Plaintiffs make the novel argument that the privately employed attorney for the Sunset Valley Defendants lacks standing to represent persons sued in their private capacity. [Dkt.56, ¶1].
6. The Sunset Valley Defendants respectfully request that the Court deny *Plaintiff's Motion to Strike Rule 12 Motion* in its entirety.

## **II. ARGUMENT AND AUTHORITY**

7. Plaintiffs' argument is unusual in that Plaintiff seeks the disqualification of Defendants' attorneys of choice without reference to any ethical breach or conflict of interest. Because of the interests of the parties in having counsel of their choice, the Court should tread carefully under

these circumstances.

A disqualification inquiry, particularly when instigated by an opponent, presents a palpable risk of unfairly denying a party the counsel of his choosing. Therefore, notwithstanding the fundamental importance of safeguarding popular confidence in the integrity of the legal system, attorney disqualification, particularly the disqualification of an entire firm, is a sanction that must not be imposed cavalierly.

*F.D.I.C. v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1316 (5th Cir. 1995)

8. “Texas law presumes that an attorney has the authority to sign pleadings on behalf of the client.” *Maiz v. Virani*, 311 F.3d 334, 341 fn.5 (5th Cir. 2002). “The general rule in Texas is that an attorney is presumed to have authority to appear and act on behalf of his client unless it is shown conclusively that the attorney was not authorized.” *Arbuckle Broadcasters, Inc. v. Rockwell Int'l Corp.*, 513 F. Supp. 412, 418 (N.D. Tex. 1981)(citing *Hidalgo County Drainage Dist. v. Magnolia Petroleum Co.*, 47 S.W.2d 875, 876 (Tex.Civ.App. San Antonio 1932, writ ref'd)).

9. In the present case, Plaintiffs do not allege that the undersigned ever represented them and that there is a conflict of interest, or that the undersigned has access to any private information that would prejudice Plaintiffs in any way. Plaintiffs simply do not have standing to challenge the Sunset Valley Defendants’ choice of counsel. See *O'Connor v. Jones*, 946 F.2d 1395, 1399 (8th Cir. 1991)(Holding that the District Court erred in disqualifying counsel on a motion that it had no authority to entertain.).

10. Even if the Court considers Plaintiff’s Motion to be pursuant to Texas Rule of Civil Procedure 12, Rule 12 does not apply to this Court. *Badaiki v. Cameron Int'l Corp.*, No. 4:19-CV-371, 2020 WL 8990868, at \*1 (S.D. Tex. Nov. 20, 2020)(citing *Rodriguez v. State Farm Lloyds*, No. 15-CV-85, 2016 WL 10804242, at \*3 (S.D. Tex. Sept. 13, 2016) (“Because a motion to show authority is a creature of Texas's procedural rules, it is unclear whether such a motion exists or is recognized at the Federal stage[.]”); *Wirsche v. Bank of Am., N.A.*, No. 13-CV-528,

2013 WL 6564657, at \*2 (S.D. Tex. Dec. 13, 2013) (noting that federal courts apply federal procedural law when exercising diversity jurisdiction and that, although the line between substantive and procedural law is hazy, plaintiff's reliance on Texas Rule of Civil Procedure 12 was "inapposite"); *T.R. Hoover Cmty. Dev. Corp. v. City of Dallas*, No. 06-CV-2148, 2008 WL 2604818, at \*2 n.2 (N.D. Tex. July 2, 2008) (finding Texas Rule 12 inapplicable to the case, which had been removed from state court based on federal question and supplemental jurisdiction)). Moreover, Plaintiffs' Motion is not sworn as required by Rule 12.

**IV.**  
**CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court deny *Plaintiff's Motion to Strike Rule 12 Motion* [Dkt.56] in its entirety and request such other and further relief to which Defendants may show themselves to be justly entitled, at law and in equity.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served in accordance with the Federal Rules of Civil Procedure on this 18<sup>th</sup> day of September, 2023, to the following:

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